
ORD Policies and Procedures Manual
Chapter 10: Communication and Technical Products
Section 10.9 – Freedom of Information Act

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A. POLICY STATEMENT

It is the Office of Research and Development's (ORD) policy to make the fullest possible disclosure of information to any requester in responding to written requests in a timely manner, consistent with the letter and spirit of governing statutes and in accordance with Federal and EPA Freedom of Information Act (FOIA) policies and procedures. This ORD policy and procedure supplements both Agency and Federal regulations and statutory requirements.

B. POLICY RECISION

This policy supersedes previous ORD policies on this subject.

- (1) ORD Policies and Procedures Manual (PPM) Chapter 10.9 (originally issued as ORPM Policy Transmittal 94-162, dated May 10, 1994).
- (2) ORD PPM Chapter 10.9, Freedom of Information Act, dated June 27, 2001.
- (3) ORD PPM Chapter 10.9, Freedom of Information Act, dated April 1, 2002.

C. REFERENCES

1. EPA Freedom of Information Act Manual 1550, dated May 4, 1992 (and as subsequently updated), and supplemental Agency guidance.
<http://intranet.epa.gov/r3intran/esclibrary/rm/pdf/FOIAManualEPA1550.pdf>
2. Freedom of Information Act, 5 U.S.C. § 552, and subsequent amendments, including the Electronic Freedom of Information Amendments of 1996, P.L. 104-231.
<http://www.justice.gov/oip/amended-FOIA-redlined.pdf>
3. EPA Delegations Manual 1200 Sections 1-30 and 1-31 Freedom of Information dated November 1, 1983 and May 7, 2008, respectively. <http://intranet.epa.gov/ohr/rmpolicy/ads/dm/1-30.htm> and http://intranet.epa.gov/ohr/rmpolicy/ads/dm/1-31_529.htm
4. Presidential memoranda dated January 21, 2009, subjects: Freedom of Information Act and Transparency in Government.
http://www2.gwu.edu/~nsarchiv/news/20090121/2009_FOIA_memo.pdf
5. Attorney General's memorandum dated March 19, 2009, subject: Freedom of Information Act. <http://www.justice.gov/ag/foia-memo-march2009.pdf>
6. Administrator's memorandum dated April 23, 2009, subject: Transparency in EPA's Operations.
<http://dchqdomino1.dcicc.epa.gov:9876/intranet/hqmailer.nsf/0/7cbf4d1dc6f45216852575a1006b96ed?OpenDocument>
7. CIO 2157.1, Freedom of Information Act Policy, September 30, 2014,
http://intranet.epa.gov/oei/imitpolicy/qic/ciopolicy/CIO_2157.1.pdf

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8. CIO 2157-P-01.1, Procedures for Responding to Freedom of Information Act Requests, September 30, 2014, http://intranet.epa.gov/oei/imitpolicy/qic/ciopolicy/CIO_2157-P-01.1.pdf
9. Resource Management Directive System 2540-09 Policy, April 13, 2011 and accompanying procedures - P1 & P4,
http://intranet.epa.gov/ocfo/policies/direct/2540/2540-09_receivables_and_billings.pdf,
http://intranet.epa.gov/ocfo/policies/direct/2540/2540-09-p1_billing_and_collecting.pdf,
http://intranet.epa.gov/ocfo/policies/direct/2540/2540-09-p4_performance_measures_and_reporting.pdf
10. Freedom of Information Act Exemptions, http://www.epa.gov/foia/foia_exemptions.htm
11. FOIAonline Professional User Guide (version 0.06), June 16, 2014, 93 pgs.,
<https://foiaonline.regulations.gov/resources/agency/FOIAonline%20Agency%20User%20Guide.pdf>
12. FOIAonline Administration Guide (version 0.03), June 6, 2014, 61 pgs.,
<https://foiaonline.regulations.gov/resources/agency/FOIAonline%20Administration%20Guide.pdf>
13. EPA Policy and Guidance, <http://www.epa.gov/foia/reference.html>
14. CFR Title 40--Protection of Environment, CHAPTER I--ENVIRONMENTAL PROTECTION AGENCY, PART 2--PUBLIC INFORMATION, SUBPART A
<http://www.epa.gov/foia/foiaregs.htm>
15. Federal Register Presidential Documents, Vol. 74, No. 15, Monday, January 26, 2009,
<http://www.gpo.gov/fdsys/pkg/FR-2009-01-26/pdf/E9-1777.pdf>
16. Title 3, Memorandum of January 21, 2009, the President, Freedom of Information Act ,
http://www.uspto.gov/ip/boards/foia_rr/President_Letter_re_FOIA_Jan-21-2009.pdf
17. *The United States Department of Justice Guide to the Freedom of Information Act*,
http://www.justice.gov/oip/foia_guide09/procedural-requirements.pdf
18. CIRCULAR A-110 REVISED 11/19/93 As Further Amended 9/30/99 Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,
http://www.whitehouse.gov/omb/circulars_a110/
19. FOIAonline Public User Guide (version 0.04), Sept 14, 2012, 41 pgs.
<https://foiaonline.regulations.gov/resources/public/FOIAonline%20Public%20User%20Guide.pdf>

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D. PURPOSE

ORD follows all Federal laws and Agency policies and procedures in responding to FOIA requests. All denial decisions should have a sound legal basis in accordance with the Attorney General's decision on whether to defend Agency actions under the FOIA when they are challenged in court and to make discretionary releases of information where allowable. Therefore, assertion of a FOIA exemption should be on sound footing both factually and legally, whenever records are being withheld.

ORD has additional FOIA requirements: (1) each no responsive records, denial or partial denial letter must be signed by the Director of the Office of Program Accountability and Resource Management (OPARM); (2) ORD requires use of indexes for both releasable and non-releasable records that are uploaded into FOIAonline; (3) verification of adequacy of FOIA search/"no records certificate" signed by the subject-matter expert(s) (SMEs) involved.

E. DEFINITIONS

1. **Adequacy of Searching Records** – The adequacy of an Agency's records under the FOIA is determined by a test of reasonableness, which may vary from case to case. Who looked? Where did they look? What did the search entail and was it reasonable? Were records personally reviewed? When did the search take place? Were EPA standard electronic search tools utilized where appropriate?
2. **FOIAonline** - EPA's FOIA tracking and management system. OEI enters all requests into FOIAonline. FOIAonline is a system intended to provide "cradle to grave" electronic tracking of incoming FOIA requests and Agency responses. The system features web-based access and enhancements such as workflow management, metadata tracking, and generation of the annual EPA FOIA Report. The National FOIA Officer uses FOIAonline to monitor the timeliness of FOIA responses. The ORD FOIA Coordinator and other EPA program offices preparing FOIA responses use FOIAonline to track and respond to FOIA requests. ORD L/C/O FOIA Coordinators can also access FOIAonline.
3. **Freedom of Information Act (FOIA)** - The Freedom of Information Act (FOIA) was signed into law in 1966. The FOIA provides individuals with a statutory right of access to certain federal agency records. The FOIA requires agencies to disclose requested records unless they are protected from public disclosure by the FOIA. Congress included in the FOIA nine exemptions and three law enforcement exclusions to protect important interests such as national security, personal privacy, privileged communications, and law enforcement.
4. **Full Denial** – An agency decision not to release any records in response to a FOIA request because the records are exempt in their entirety under one or more of the FOIA exemptions, or because of a procedural reason, such as when no records could be located. A denial response must be signed by an Authorized Official.

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5. **Full Grant** – An agency decision to disclose all records in full in response to a FOIA request.
6. **No Records Response** - A FOIA request for which no responsive records were located.
7. **Partial Grant/Partial Denial** - An agency decision to disclose records or portions of records while withholding other records or portions of records that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.
8. **Records** - Information in the agency's possession and control in any format including electronic format. DOJ notes that for FOIA purposes, "records" includes all tangible documentations of information regardless of whether they are records under 44 U.S.C. § 3301. (NOTE: This is a broader definition than that used by the EPA records program and records schedules. For more information see the DOJ website under "What is an agency record?" http://www.justice.gov/oip/foia_updates/Vol_II_1/page3.htm.)
9. **Requester** - Any individual (including non-U.S. citizens), corporation or association, public interest group, and state, local, tribal, or foreign government making a FOIA request. Requests from Federal agencies, the Government Accountability Office, or Congress (e.g., the Speaker of the House, the President of the Senate, or the chair of a committee or subcommittee) are not covered under this policy.
10. **Responsive Record** - A record that the Agency has located that may be provided or is under consideration for inclusion in a response to a FOIA request. A record may be "responsive" to a FOIA request, but may be withheld due to a FOIA exemption.
11. **Subject-Matter Expert (SME)** - A person who is an authority in a particular area or topic.

F. RESPONSIBILITIES

1. Assistant Administrator for ORD (AA/ORD): The AA/ORD is responsible for ensuring that ORD employees comply with Federal law in disclosing requested information to the fullest extent possible and on time.
2. Director, Office of Program Accountability and Resource Management (OPARM): The OPARM Director or designee is responsible for (1) ensuring no responsive records, denials and partial denials are fully justified prior to approval, and (2) overseeing the ORD FOIA Program.
3. Laboratory/Center/Office (L/C/O) Directors: The L/C/O Directors and Deputy Directors for Management are responsible for ensuring that ORD employees comply with Federal law in disclosing requested information to the fullest extent possible and on time. In addition, L/C/O Directors are responsible for approving full releases of records to a FOIA request.
4. Laboratory, Center and Office (L/C/O) FOIA Coordinators: The L/C/O FOIA coordinators are responsible for (1) coordinating FOIA requests within their organization, including determining thorough searches are conducted to ensure that all responsive

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records and correspondence are uploaded into FOIAonline; (2) serving as a liaison with the ORD FOIA Coordinators; (3) preparing or assisting in the preparation of responses, while making sure responses are complete and timely; (4) obtaining extensions of due dates from the requester when necessary; (5) identifying which records are exempt or are to be withheld or if there are no relevant records found; (6) obtaining sufficient information from the requester to identify the documents being requested; (7) determining simple vs. complex cases in FOIAonline; (8) calculating relevant fee charges and ensuring they have been paid (e.g., in FOIAonline (via Pay.gov) under the Financing tab) or agreed to be paid by the requester; and (9) conferring with OGC on all requests requiring legal review. The assigned lead L/C/O FOIA Coordinator (determined by FOIAonline case assignment) will coordinate responses to FOIA requests when multiple L/C/Os contribute to the response (i.e. ORD should speak in one voice).

5. ORD FOIA Coordinators: The ORD FOIA Coordinators are responsible for (1) serving as the liaison between the EPA FOIA Office in the Office of Environmental Information (OEI) and ORD; (2) receiving FOIA requests from the EPA FOIA Office and determining the appropriate ORD organization(s) to reply and assigning them accordingly; (3) providing guidance and status reports to the L/C/Os; (4) ensuring that denial letters are documented and exceptions are justified; (5) reviewing and analyzing requests in FOIAonline for close-out purposes; (6) tracking FOIA requests for timeliness; (7) monitoring the quality and accuracy of the responses; (8) consulting with L/C/O FOIA Coordinators to resolve assignment disputes; and (9) staying informed and reporting on FOIA requests and assignments. ORD's lead FOIA Coordinator works under the general direction of the Agency's FOIA Officer.
6. ORD Staff: ORD staff are responsible for appropriately maintaining records according to Federal law and Agency policy and performing searches when requested of those records to find all responsive documents to a FOIA request.
7. Managers and Supervisors: ORD Managers and supervisors oversee FOIA Coordinators to ensure they have the knowledge, skills and ability to perform their duties and respond in a timely manner in accordance with the FOIA. They review and approve all FOIA responses before release.
8. Subject Matter Experts: SMEs identify and locate records requested under FOIA. These individuals are located in all ORD organizations and include all professional disciplines. The SMEs provide the responsive records to the appropriate FOIA Coordinator who facilitates the response for the Agency.

G. PROCEDURES

The EPA FOIA Office assigns cases to the ORD FOIA Coordinators through FOIAonline. The ORD FOIA Coordinators review and assign cases to the appropriate L/C/O FOIA Coordinators for response.

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The items below represent an ORD supplement to the Agency's FOIA policy and procedures:

1. If an L/C/O receives a FOIA request directly from the public, the L/C/O FOIA Coordinator forwards the request to the EPA FOIA Office for processing into FOIAonline.
2. L/C/O FOIA Coordinators review the requests assigned or tasked to them in FOIAonline and contact the requester with the approximate charge for processing the request (if applicable). It is at this point they may also 'stop the clock' in FOIAonline while awaiting responses back from requesters for such fee related inquiries. In addition, the L/C/O FOIA Coordinator may also contact the requester in order to narrow/clarify the scope of the request or extend the due date. If a due date extension is granted, the L/C/O FOIA Coordinator requests a due date extension in FOIAonline, uploading the concurring email from the requester as 'Other Correspondence'.
3. After receiving assurance of payment, the L/C/O FOIA Coordinator works with their organization to process the request (if applicable). The L/C/O FOIA Coordinator uploads the payment assurance email from the requester as 'Other Correspondence' in FOIAonline.
4. For full releases, the L/C/O Director signs the response letter and the L/C/O FOIA Coordinator uploads the responsive documents, Index of Releasable/Non-Releasable Records, "verification of adequacy of FOIA search/No Records certificate" and signed response letter into FOIAonline and begins the close-out process.
5. For full/partial denials and "no records" responses, the L/C/O Director and/or Deputy Director, the L/C/O FOIA Coordinator, and the subject matter expert(s) (SME) should review all files to be withheld and determine which FOIA exemption applies. When sending full/partial denials to OPARM for signature, the L/C/O FOIA Coordinator must include all records, indices of releasable and non-releasable records with exemptions, and L/C/O Director concurrence. When sending a "no records" response to OPARM signature, the L/C/O FOIA Coordinator must include the search terms used when looking for records and the systems of record searched. In addition, the L/C/O FOIA Coordinator uploads all responsive documents (releasable and non-releasable), as well as indices, into the appropriate sections of FOIAonline.
6. If more than one L/C/O is tasked with a FOIA request, the L/C/O FOIA Coordinator likely to have the most responsive records will serve as the lead for the case if no clear L/C/O lead is identified.
7. If the ORD FOIA Coordinators serve as the lead for a FOIA request, the OPARM Director will sign the response on behalf of ORD.

H. DELEGATION

EPA has delegated these authorities to the AA/ORD. The AA/ORD has further re-delegated the authority as follows. All potential re-delegations are also listed. Potential re-delegations are not to be interpreted as a re-delegation of this authority and must be made in writing by the authorized delegating official.

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Item	Agency Delegation	Redelegated to	Potential Redelegations	EPA Source	ORD Source
Initial positive determinations	AA/ORD	ORD Chief of Staff and L/C/O Directors	This authority may not be further redelegated.	EPA Delegations Manual Chapter 1-30	ORD PPM Chapter 10.9, on the date approved
Initial denials of requests for existing, located records and no records found	AA/ORD	SRO/DAA for Management and Director, OPARM	N/A	EPA Delegations Manual Chapter 1-30	ORD PPM Chapter 10.9, on the date approved

J. EXHIBITS

Not applicable.

K. APPROVAL


ORD Senior Information Official

3/26/15
Date